

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

FRANCISCO LUCIANO; JOSEPH
ANDREW RUDD and the Conjugal
Partnership constituted between them

Plaintiffs

vs.

FAIRMONT EL SAN JUAN HOTEL;
LOWE ENTERPRISES, INC.; CHUBB
INSURANCE COMPANY;

Defendants

CIVIL NO.:

DAMAGES

COMPLAINT

TO THE HONORABLE COURT:

COME NOW plaintiffs, **FRANCISCO LUCIANO** and **JOSEPH ANDREW RUDD**,
through their undersigned attorneys, and very respectfully state, allege and pray:

JURISDICTION AND VENUE

1. The diversity jurisdiction of this Honorable Court is invoked under the provisions of Title 28, United States Code, Section 1332(a)(1), and Article III, Section II of the Constitution of the United States, inasmuch as the parties are citizens of different states and the amount in controversy exceeds the sum of SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00), exclusive of costs and interest.

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2. Venue is proper because the facts which give rise to the complaint occurred within the District of Puerto Rico.

THE PARTIES

3. Plaintiffs Francisco Luciano and Joseph Andrew Rudd are of legal age, married to each other and residents and citizens of the State of Florida with the following address: 2656 NE 37th Drive, Fort Lauderdale, FL 33308-6325.
4. Defendant FAIRMONT EL SAN JUAN HOTEL (hereinafter “EL SAN JUAN HOTEL”) is a legal entity existing under the laws of the Commonwealth of Puerto Rico, which is a citizen of and has its principal place of business in the Commonwealth of Puerto Rico, to wit, ownership and operation of the Fairmont El San Juan Hotel located at: 6063 Ave. Isla Verde, Carolina, Puerto Rico 00979.
5. Defendant Lowe Enterprises, Inc. is a corporation or other legal entity with the following address: 11777 San Vicente Blvd., Suite 900, Los Angeles, California 90049-5084, which is a citizen of and has its principal place of business in a state other than the State of Florida, and which owns and operates the “EL SAN JUAN HOTEL”.
6. Defendant Chubb Insurance Company is an insurer with the following address: 33 Resolución Street, Suite 500, San Juan, Puerto Rico 00920-2707, which is a citizen of and has its principal place of business in the Commonwealth of Puerto Rico, and which issued one or more liability insurance policies covering the damages alleged in the present complaint.

FACTS

7. On February 10, 2019, plaintiffs were registered guests at the “EL SAN JUAN” hotel located in Isla Verde, Puerto Rico. Plaintiffs were enjoying a family weekend stay at

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the “EL SAN JUAN HOTEL” hotel to attend the wedding of Francisco Luciano’s niece. With great enthusiasm they had saved to travel to the island to enjoy this celebration with the family at the hotel facilities.

8. On February 10, 2019 at approximately 11:30 p.m., plaintiffs were chatting with relatives at the lobby of the “EL SAN JUAN HOTEL”. At one point during the conversation, plaintiff Francisco Luciano decided to go to the rest room in the lobby.
9. On his way to the rest room, plaintiff, Francisco Luciano slipped in a puddle of liquid on the lobby floor, which caused him to fall and resulted in him suffering severe physical damages and the shame of falling in front of other guests.
10. Prior to slipping and falling, plaintiff, Francisco Luciano did not notice the puddle on the lobby floor due to the dim lighting in the area. The hotel had not placed any notice or sign in the area warning the guests of any dangerous condition and plaintiff Francisco Luciano did not cause or contribute in any way to the occurrence of his fall.
11. Prior to Francisco Luciano’s slip and fall, employees, agents and/or other personnel of the “EL SAN JUAN HOTEL” had actual or constructive notice of the puddle of liquid he slipped on and failed to act in time to remedy this situation.
12. Immediately after falling, plaintiff Francisco Luciano was assisted by bystanders who helped him to get up while hotel personnel cleaned the puddle and notified the incident to the hotel management. After that, an employee from the hotel administration handed Mr. Luciano a Statement Form.
13. As a result of the fall, plaintiff, Francisco Luciano suffered immediate pain and discomfort in his neck, lower back and shoulder.

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14. On the following day, February 11, 2019, when plaintiffs checked out at the hotel reception, Mr. Luciano handed the reception staff the Statement Form duly completed and signed.
15. That same day, February 11, 2019, plaintiff boarded a flight back home to Florida, during which suffered excruciating pain and discomfort.
16. Once in Florida, plaintiff, Francisco Luciano contacted his physician at the Florida Pain Center to make an emergency appointment due to the severe pain he was suffering in his neck, lower back and right shoulder and because was having difficulties walking and sitting for a long time.
17. His physician diagnosed tension in the lumbar and neck areas and right shoulder acute pain, for which he prescribed chiropractic treatment and physical therapy. He was in treatment for several months including 15 sessions of therapy and treatment with his chiropractor. He was also prescribed medication for the severe pain.
18. In 2017 Mr. Luciano had undergone arthroscopic surgery of his right shoulder, after which he received medical treatment and physical therapies.
19. As a result of his fall at the “EL SAN JUAN HOTEL” in 2019, however, plaintiff Francisco Luciano’s right shoulder condition was significantly aggravated and the prior rehabilitation rendered worthless.
20. Plaintiff continues to receive treatment and has not yet recovered fully from his injuries.
21. As a result of the incident described herein, plaintiff, Francisco Luciano suffered and continues suffering physical and emotional damages, including but not limited to physical pain, discomfort, mental anguish, difficulties dressing alone, imbalance, an inability to perform certain exercises, diminished job performance, loss of enjoyment

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of life, loss of sleep, travel limitations, loss of mobility and partial disability, the monetary value of which should be determined by the jury.

22. As his husband, plaintiff, Joseph Andrew Rudd shares his pain and suffering, and has experienced emotional distress as a result thereof.
23. As a result of the incident described herein, plaintiff Francisco Luciano has incurred out-of-pocket expenses for medication and treatment, with further expenses expected.
24. On November 25, 2019, plaintiffs submitted an extrajudicial claim to the defendants and their insurer, which tolled the running of the applicable statute of limitations. Thereafter, plaintiffs' counsel engaged in fruitless settlement negotiations with the defendants and their insurer, the last of which occurred on October 20, 2020.

CAUSE OF ACTION

25. The allegations of the preceding paragraphs are incorporated by reference as if set forth in their entirety.
26. Under Article 1802 of the Civil Code of Puerto Rico, the defendants Fairmont El San Juan Hotel and Lowe Enterprises, Inc. had at all times the duty to exercise reasonable care in the operation of the "EL SAN JUAN HOTEL", such as might be exercised by a good family father. As owners and operators of a hotel, these defendants were required to exercise a particularly heightened degree of care towards their guests, which included a duty to maintain the premises in reasonably safe condition, in order to protect the safety and security of all hotel guests, such as the plaintiffs herein.
27. The lobby area of the "EL SAN JUAN HOTEL" is a heavily trafficked part of the premises which has a large bar surrounded by numerous seating areas, and is frequented by hotel guests and invitees, many of whom are consuming beverages. It was therefore reasonably foreseeable at the time of the incident subject of this

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- complaint that guests, invitees and/or lobby bar servers might occasionally spill their drinks on the lobby floor. Because of the dim lighting and shinny floor, it was also reasonably foreseeable that any accumulation of liquid on the lobby floor might go unnoticed by persons traversing the lobby, thereby resulting in a potentially dangerous situation.
28. The defendants Fairmont El San Juan Hotel and Lowe Enterprises, Inc. breached their duty of care towards plaintiffs by failing to monitor the area in question, failing to adequately illuminate the area, failing to ensure that the area was kept in a reasonably safe condition, and by failing to warn guests that such area was wet and slippery, despite actual or constructive notice of a potentially dangerous condition.
29. All damages suffered by plaintiffs are the direct, proximate and foreseeable consequence of the actions, omissions, negligence and breach of duty of the defendants Fairmont El San Juan Hotel and Lowe Enterprises, Inc.
30. Plaintiff Francisco Luciano did not cause or contribute to the occurrence of the incident described above, nor did he cause or contribute to the damages alleged.
31. As an insurer which issued one or more liability insurance policies covering the damages alleged in the present complaint, defendant Chubb Insurance Company is directly liable to plaintiffs under Puerto Rico's direct action statute, Title 26 P.R. Laws Annotated, Section 2003.
32. To the extent the defendants deny liability for the damages claimed herein, they act with obstinacy and temerity and are therefore liable for prejudgment interest, costs and attorneys' fees.
33. Pursuant to the Seventh Amendment and Fed.R.Civ.P. 38, plaintiffs demand trial by jury of all triable issues in this case.

7.

WHEREFORE, plaintiffs respectfully request that the Honorable Court grant the present complaint and award damages to them, exclusive of prejudgment interest from the date of this filing, costs and reasonable attorneys' fees, in the following amounts:

- a. Plaintiff Francisco Luciano: \$800,000.00
- b. Plaintiff Joseph Andrew Rudd: \$200,000.00

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 20th day of November, 2020.

S/Manuel San Juan

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